

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 1:17-cv-00116

RONALD W. ARMSTRONG, LYNDA L.
ARMSTRONG, R.W. ARMSTRONG FAMILY
LIMITED PARTNERSHIP,, and TONY
YZAGUIRRE, JR. AS CAMERON COUNTY
TAX ASSESSOR/COLLECTOR,

Defendants.

RONALD W. ARMSTRONG,
LYNDA L. ARMSTRONG,

Counter-Plaintiffs

v.

UNITED STATES OF AMERICA
Counter-Defendant

UNITED STATES' AMENDED COMPLAINT

1. As authorized and directed pursuant to 26 U.S.C. § 7401, the United States of America brings this action to (1) foreclose federal tax liens for tax years 2003 and 2004 on property located in Cameron County, Texas; (2) obtain a sale of such property; (3) obtain a judgment for any amount remaining unpaid after the distribution and application of the proceeds when the subject property is sold;; and (4) award the 10% surcharge if the United States must use the remedies under Subchapter B or C of the Federal Collections Procedure Act.

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to 26 U.S.C. §§ 7402 and 7403, and 28 U.S.C. §§ 1331, 1340, and 1345 because this action arises under federal tax law, and the United States is the plaintiff.

2. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1396 because Defendants Ronald Armstrong and Lynda Armstrong reside in Cameron County, Texas, and the property subject to this action is also located in Cameron County, Texas.

Parties

3. Plaintiff is the United States of America.

4. Defendant Ronald W. Armstrong may claim an interest in the property to be foreclosed. Mr. Armstrong may be served at 155 Poinciana Dr., Brownsville, Texas 78521.

5. Defendant Lynda L. Armstrong may claim an interest in the property to be foreclosed. Mrs. Armstrong may be served at 155 Poinciana Dr., Brownsville, Texas 78521.

6. [Blank]

7. [Blank]

8. [Blank]

9. [Blank]

10. [Blank]

11. Defendant Tony Yzaguirre, Jr., as the Cameron County Tax Assessor-Collector, may claim an interest in the property to be foreclosed. He may be served at his place of business located at 964 East Harrison St., Brownsville, TX 78520.

Tax Liabilities

12. On the dates, in the amounts, and for the taxable periods set forth below, a delegate of the Secretary of the Treasury made assessments against Defendants Ronald Armstrong and Lynda Armstrong for Form 1040 federal income tax liabilities (“the Tax Liabilities”), which have balances due, after accounting for all payments, credits, and accruals through March 12, 2018, as follows:

Tax Year	Assessment Date	Balance	Unpaid Balance with Interest and Statutory Additions as of 3/12/18
2003	6/18/2007	\$87,503.08	\$96,201.19
2004	6/11/2007	\$209,278.40	\$232,397.47
Total		\$296,781.48	\$328,598.66

13. The IRS based the tax assessments of the preceding paragraph on the Form 1040s that defendants Ronald Armstrong and Lynda Armstrong subscribed under penalty of perjury and filed with the IRS.

14. Defendants Ronald Armstrong and Lynda Armstrong further owe all interest and statutory additions that accrue from March 12, 2018, until their tax liabilities are paid.

15. On or about July 18, 2015, the IRS sent Defendants Ronald Armstrong and Lynda Armstrong a notice and demand to pay the Tax Liabilities (**Exhibit 1**), but Defendants Ronald Armstrong and Lynda Armstrong did not pay in full the amounts due.

The Property

16. On or about April 3, 1998, Defendant Mr. and Mrs. Armstrong acquired certain real property in Cameron County, Texas (“the Property”) via warranty deed with vendor’s lien from Mary L. McGowan, (**Exhibit 2**), the Property having the following legal description:

Lot Number One (1), Block Number One (1), ARMSTRONG SUBDIVISION, per map recorded in Cabinet I, Page 1608-B, Map Records of Cameron County, Texas.

commonly known as 155 Poinciana Dr., Brownsville, Texas 78521.

17. On June 7, 1999, Defendants Ronald Armstrong and Lynda Armstrong executed a warranty deed purportedly transferring the Property to Defendant R.W. Armstrong Family Limited Partnership (**Exhibit 3**).

18. On January 2, 2017, title to the Property was deeded from the Defendant R.W. Armstrong Family Limited Partnership back to Defendants Ronald Armstrong and Lynda Armstrong. The deed was not recorded in the public records until August 11, 2017.

Liens on the Property

19. Pursuant to 26 U.S.C. §§ 6321 and 6322, statutory liens arose on the assessment dates for the Tax Liabilities, and attached to all property or rights to property of Defendants Ronald Armstrong and Lynda Armstrong and to property acquired thereafter.

20. On May 4, 2004, an abstract of judgment was recorded in the Office of the County Clerk of Cameron County, Texas, on behalf of the LPP Mortgage LTD in the amount of \$220,224, but a release of this abstract of judgment was recorded on February 7, 2013.

21. On or about the September 4, 2007, the United States filed a notice of federal tax lien (**Exhibit 4**) against the property of Defendants Ronald Armstrong and Lynda Armstrong in the Office of the County Clerk of Cameron County, Texas that related to the 2003 and 2004 tax years. In November, 2017, the United States filed a notice of federal tax lien against the property of Defendants Ronald Armstrong and Lynda Armstrong in the Office of the County Clerk of Cameron County, Texas that related to the 2003 and 2004 tax years. These liens encumber Defendants Ronald Armstrong and Lynda Armstrong's interest in the Property that is the subject of this action.

22. (Blank).

23. (Blank).

- 24. (Blank).
- 25. (Blank).
- 26. (Blank).
- 27. (Blank).
- 28. (Blank).
- 29. (Blank).
- 30. (Blank).
- 31. (Blank).
- 32. (Blank).
- 33. (Blank).
- 34. (Blank).
- 35. (Blank).
- 36. (Blank).

Causes of Action

Cause No. 1 – Reduce Tax Liabilities to Judgment

37. Defendants Ronald Armstrong and Lynda Armstrong owe the United States \$328,598.66, combined for tax years 2003, and 2004, with interest calculated to March 12, 2018. They further owe all interest and statutory additions that continue to accrue from March 12, 2018, until the Tax Liabilities are paid.

Cause No. 2 – Tax Lien Foreclosure

38. On or about September 4, 2007, and November 2017, the IRS filed notices of federal tax lien against Defendants Ronald Armstrong and Lynda Armstrong in the Office of the County Clerk of Cameron, Texas. All these liens encumber the Property. Also, pursuant to 26 U.S.C. §§ 6321 and 6322, statutory federal tax liens arose in favor of the United States of

America, against all property and rights to property, whether real or personal, belonging to Defendants Ronald Armstrong and Lynda Armstrong, as of the dates of the tax assessments described above, or acquired thereafter. The United States seeks a judgment foreclosing the federal tax liens and ordering the sale of the Property to pay the Tax Liabilities, and seeks a deficiency judgment against Defendants Ronald Armstrong and Lynda Armstrong for any taxes remaining unpaid after the sales proceeds are applied to the Tax Liabilities.

39. (Blank).

40. (Blank).

41. (Blank).

42. (Blank).

43. (Blank).

44. (Blank).

45. (Blank).

Cause No. 4 – Ten Percent Surcharge for Costs of Collection

46. Section 3011.28 U.S.C., authorizes the United States to recover a surcharge of 10% of the amount of the debt in the event the United States avails itself of the pre-judgment or post judgment relief as set forth in Subchapter B or C of the Federal Debt Collection Procedure Act, 28 U.S.C. §§3001 et. seq., in order to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt.

Prayer

The United States respectfully requests that the Court issue an order providing the following relief:

Liability Judgment

A. That the Court reduce to judgment the Tax Liabilities in the amount of \$328,598.66, and

for interest, penalties, and statutory additions on that amount from March 12, 2018, until paid;

Tax Lien Foreclosure

- B. That the tax liens that encumber the Property be foreclosed, that the Property be ordered sold by the Internal Revenue Service or by a receiver approved by the Court, that the proceeds thereof be first applied to the costs of the sale and any ad valorem taxes, and then applied in satisfaction or partial satisfaction of the tax liens of the United States and in payment or partial payment of Defendants Ronald Armstrong and Lynda Armstrong's Tax Liabilities.
- C. (Blank).
- D. (Blank).

Litigation Surcharge

- E. That the surcharge to which the United States is entitled under 28 U.S.C. § 3011 be awarded, corresponding to ten percent of the amount of the tax debt, to cover the costs of litigation and enforcement of the debt claim if the United States must use the remedies under sub-chapter B or C of the Federal Debt Collections Procedure Act; and
- F. That the United States have such further relief as this Court may deem just and proper, including its costs herein.

Respectfully submitted,

RYAN PATRICK
United States Attorney

/s/ Ignacio Perez de la Cruz
IGNACIO PEREZ DE LA CRUZ
Trial Attorney
Massachusetts Bar No. 672618
SDTX Federal ID No. 2433910
Ignacio.PerezdeCruz@usdoj.gov
U.S. Department of Justice
Tax Division
717 N. Harwood, Suite 400
Dallas, Texas 75201
(214) 880-9759
(214) 880-9742 (Fax)
ATTORNEY FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I certify that on March 9, 2018 I electronically filed the foregoing pleading using the ECF system, which will send notification to any parties of record, as follows:

JASON R. MANN 1309 N. Stuart Place Rd, Suite A Harlingen, TX 78552 ATTORNEYS FOR RONALD W. ARMSTRONG, LYNDAL L. ARMSTRONG	LORI GRUVER LINEBARGER GOGGAN, BLAIR & SAMPSON, LLP P.O. Box 17428 Austin, Texas 78760 ATTORNEY FOR YZAGUIRRE, JR. AS CAMERON COUNTY TAX ASSESSOR/COLLECTOR
RONALD ARMSTRONG State Bar No. 01323500 Federal ID No. 2237 2600 Old Alice Road, Suite A Brownsville, Texas 78521 (956) 546-5556 / Telephone (956) 546-0470 / Facsimile ATTORNEY FOR RONALD W. ARMSTRONG, LYNDAL L. ARMSTRONG	

/s/ Ignacio Perez de la Cruz
IGNACIO PEREZ DE LA CRUZ

Internal Revenue Service

1810 HALE AVENUE
HARLINGEN, TX 78550

Department of the Treasury

copy

RONALD W ARMSTRONG
2600 OLD ALICE RD STE A
BROWNSVILLE, TX 78521-1456731

Letter Date:

06/18/2015

Taxpayer Identification Number

IRS Employee to Contact:

VERONICA RUIZ

Employee Identification Number:

1000985562

Contact Telephone Number:

(956)365-5148

For Account of:

RONALD W & LYNDAL ARMSTRONG

RONALD W & LYNDAL ARMSTRONG

RONALD W & LYNDAL ARMSTRONG

RONALD W & LYNDAL ARMSTRONG

RONALD W & LYNDAL ARMSTRONG

RONALD W & LYNDAL ARMSTRONG

Exhibit

1

Although we previously sent you a notice of our intention to collect your unpaid tax through enforced collection, our records show that you still have not paid the amount you owe. Enforced collection may include placing a levy on your bank accounts, wages, receivables, commissions, etc. It could also involve seizing and selling your property, such as real estate, vehicles, or business assets.

To prevent collection action, please pay the amount you owe by 07/03/2015.

To ensure that you and your spouse receive this notice, a copy is being sent to each of you. Each copy contains the same information related to your joint account. Any amount you owe should be paid only once.

Make your check or money order payable to the United States Treasury, and write your social security number or employer identification number on it. Send your payment to us in the enclosed envelope with a copy of this letter. **The amount you owe is shown on the next page.**

If you recently paid this or if you can't pay it, call as soon as you get this letter. Our telephone number is at the top of this letter. If you disagree with our taking enforcement action, you may be able to work out another solution. Speak to the person whose name appears at the top of this letter, or ask for that person's manager. If you do not agree with the results, you may ask for appeals consideration.

The unpaid amount from prior notices may include tax, penalties, and interest you still owe. It also includes credits and payments we have received since our last notice to you.

Interest - Internal Revenue Code Section 6601

We charge interest when your tax is not paid on time. Interest is computed from the due date of your return (regardless of extensions) until paid in full or to the date of this notice. Interest is also charged on penalties assessed on your account. Interest compounds daily except on underpaid estimated taxes for individuals or corporations.

Paying Late - Internal Revenue Code Section 6651(a)(2)

We charge a penalty when your tax is not paid on time. Initially, the penalty is ½ of 1% of the unpaid tax for each month or part of a month the tax was not paid.

Number of this letter: 3174A

Date of this letter: 06/18/2015

Taxpayer Identification Number: [REDACTED]

If you have any questions about your account or would like a further detailed explanation of the penalty and interest charges on your account, please call me at the telephone number shown at the top of the first page of this letter.

Thank you for your cooperation.

Sincerely,

VERONICA RUIZ
REVENUE OFFICER

Enclosures:
Envelope

The amount you owe is:

Form Number	Tax Period	Unpaid Amount from Prior Notices	Additional Penalty	Additional Interest	AMOUNT YOU OWE
1040	12/31/2003	\$111,780.98	\$0.00	\$0.00	\$111,780.98
1040	12/31/2004	\$357,666.40	\$0.00	\$6,975.21	\$364,641.61
1040	12/31/2005	\$14,952.95	\$0.00	\$291.61	\$15,244.56
1040	12/31/2006	\$40,090.72	\$0.00	\$781.85	\$40,872.57
1040	12/31/2010	\$12,997.18	\$669.41	\$253.47	\$13,920.06
1040	12/31/2011	\$34,366.88	\$0.00	\$670.23	\$35,037.11
Total:					\$581,496.89

2605

VOL 4840 PAGE 276 OFFICIAL RECORDS

2253

RICE GRANDE VALLEY ABSTRACT
C. of 234216 610.Prepared by the State Bar of Texas for use by lawyers only.
Revised 10-85**WARRANTY DEED WITH VENDOR'S LIEN**

DATE: March 31, 1998

GRANTOR: Mary L. McGowan

GRANTOR'S MAILING ADDRESS (INCLUDING COUNTY):

GRANTEE: R. W. Armstrong and Lynda S. Armstrong

GRANTEE'S MAILING ADDRESS (INCLUDING COUNTY): 15 Edgewater
Brownsville, Cameron County, TX,**CONSIDERATION:**

TEN AND NO/100 Dollars (\$10.00) and other consideration, the receipt of which is hereby acknowledged, and a Note of even date with terms as contained therein, executed by Grantees, payable to the order of Rice Manufacturing, Inc.. It is secured by a vendor's lien retained in favor of Mary L. McGowan in this Deed and by a Deed of Trust of even date from Grantees to Paul Y. Cunningham, Trustee.

The said Vendor's Lien and Superior Title herein retained are hereby transferred, assigned, sold and conveyed to Rice Manufacturing, Inc..

PROPERTY (INCLUDING ANY IMPROVEMENTS):

Lot Number One (1), Block Number One (1), ARMSTRONG SUBDIVISION, per map recorded in Cabinet I, Page 1608-B, Map Records of Cameron County, Texas.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

Restrictions: Recorded in Volume 465, Page 223, Deed Records of Cameron County, Texas.

Rights, rules and regulations by law in favor of Cameron County Water Control and Improvement District Number Seven (7).

Erosions and accretions caused by the waters of Resaca de la Guerra.

Easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor hereby binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns, against every person whomever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to warranty.

The vendor's lien against and superior title to the property are retained until each note described is fully paid according to its terms, at which time this deed shall become absolute.

When the context requires, singular nouns and pronouns include the plural.

Mary L. McGowan
Mary L. McGowan

Exhibit

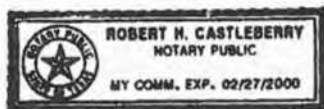
2

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(Acknowledgement)

STATE OF TEXAS
COUNTY OF Cameron

This instrument was acknowledged before me on the 3rd of April,
1998, by Mary McGowan.



Robert H. Castleberry
Notary Public, State of Texas
Notary's name (printed):

Notary's commission expires:

AFTER RECORDING RETURN TO:
R. W. Armstrong
15 Edgewater
Brownsville TX

PREPARED IN THE LAW OFFICE OF:
Robert H. Castleberry
905 W. Price Road
Brownsville, TX 78520

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12605

FILED FOR RECORD
AT
APR 7 10 50 AM '98
JOE C. AYKRA
CLERK COUNTY COURT
CAMERON COUNTY, TEXAS
BY [Signature] DEPUTY

STATE OF TEXAS
COUNTY OF CAMERON
The foregoing instrument was FILED on the
date and at the time hereinafter stated by me and was duly
RECORDED in the year 1998, the name of the person by whom
Cameron County, Texas as signed hereon by me



[Signature]
County Clerk
Cameron County Texas

24429 OFFICIAL RECORDS
WARRANTY DEED

VOL. 5635 PAGE 125

Date: June 7 1999

GRANTOR: RONALD W. ARMSTRONG AND WIFE LYNDIA ARMSTRONG

Grantor's Mailing Address (including county): 2600 Old Alice Rd., Suite A, Brownsville, Cameron County, Texas 78521

GRANTEE: R.W. ARMSTRONG FAMILY LIMITED PARTNERSHIP

Grantee's Mailing Address (including county): 2600 Old Alice Rd., Suite A, Brownsville, Cameron County, Texas 78521

CONSIDERATION: TEN AND NO/100 DOLLARS and other valuable consideration

PROPERTY: Lot Number One (1), Block Number One (1), ARMSTRONG SUBDIVISION, per map recorded in Cabinet I, Page 1608-B, Map Records of Cameron County, Texas.


RESERVATIONS from and Exceptions to Conveyance and Warranty

Easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and coveyances, that affect the property; and discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements.

GRANTORS, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee heirs, executors, administrators, successors, or assigns forever. Grantors binds Grantors and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

EXECUTED this 7th day of June, A.D., 1999.

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Ronald W. Armstrong



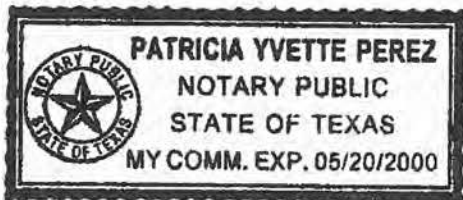
Lynda Armstrong

(Acknowledgment)

STATE OF TEXAS §

COUNTY OF CAMERON §

This instrument was acknowledged before me on the 7th day of June, 1999, by Ronald W. Armstrong and wife Lynda Armstrong.





Notary Public, State of Texas
Notary's name (printed): PATRICIA YVETTE PEREZ

Notary's commission expires: 5/20/2000

RETURN TO:

R.W. Armstrong
2600 OLD ALICE RD, S.E.A.
Brownsville, TEXAS 78521

24429

FILED FOR RECORD

AT _____

1999 JUN -7 P 4: 42

JOE G. RIVERA
CLERK COUNTY COURT
CAMERON COUNTY, TEXAS
BY JMP DEPUTY

VOL. 5635 PAGE 127

STATE OF TEXAS
COUNTY OF CAMERON
I hereby certify that this instrument was FILED on the
date and at the time stamped hereon by me and was duly
RECORDED in the Volume and page of the named RECORDER
of Cameron County, Texas as stamped hereon by me



J. Rivera
County Clerk
Cameron County, Tex

Cameron County
 Joe G Rivera
 County Clerk
 Brownsville, TX 78520



70 2007 00048491

Instrument Number: 2007-00048491

As

Recorded On: September 04, 2007

Federal Tax Lien

Parties:

To

Number of Pages: 3

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Federal Tax Lien	21.00
Total Recording:	21.00

***** DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
 because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2007-00048491

Receipt Number: 394445

Recorded Date/Time: September 04, 2007 03:12:01P

Book-Vol/Pg: BK-OR VL-14271 PG-181

User / Station: H Perez - Cash Station #4

Record and Return To:

US GOVERNMENT IRS

PO BOX 145595

CINCINNATI OH 45250

I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the Official Public
 Records in Cameron County, Texas



Joe G. Rivera
 Cameron County Clerk

Exhibit

4

Form 668 (Y)(c) (Rev. February 2004)	3592	Department of the Treasury - Internal Revenue Service Notice of Federal Tax Lien				00048491
Area: SMALL BUSINESS/SELF EMPLOYED AREA #5 Lien Unit Phone: (800) 913-6050		Serial Number 386602307		For Optional Use by Recording Office		
As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.						
Name of Taxpayer RONALD W & LYNDAL L ARMSTRONG						
Residence 2600 OLD ALICE RD SUITE A BROWNSVILLE, TX 78521-1456						
IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).						
Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)	
1040	12/31/2003	XXX-XX-8155	06/18/2007	07/18/2017	85984.63	
1040	12/31/2004	XXX-XX-8155	06/11/2007	07/11/2017	256097.69	
Place of Filing CAMERON COUNTY BROWNSVILLE, TX 78522						Total \$ 342082.32

This notice was prepared and signed at DALLAS, TX, on this,

the 23rd day of August, 2007.

Signature <u>R. A. Mitchell</u> for J. JIMENEZ	Title REVENUE OFFICER (956) 365-5134	25-08-3733
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(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien
 Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Sent By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
 CAT NO 60025X

Doc Bk Vol Ps
00048491 OR 14271 183

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
On: Sep 04, 2007 at 03:12P

Document Number: 00048491

By
Part Time
Joe G Rivera, County Clerk
Cameron County